

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

JOE ZEITCHICK,) 3:06-CV-0138-ECR-VPC (Base File)
) 3:06-CV-0642-ECR-VPC (Member File)
Plaintiffs,)
) MINUTES OF THE COURT
vs.)
) DATE: June 11, 2010
CAROL LUCEY and HELAINE JESSE)
)
)
Defendants.)
_____)

PRESENT: _____ EDWARD C. REED, JR. _____ U. S. DISTRICT JUDGE

Deputy Clerk: _____ COLLEEN LARSEN _____ Reporter: _____ NONE APPEARING

Counsel for Plaintiff(s) _____ NONE APPEARING

Counsel for Defendant(s) _____ NONE APPEARING

MINUTE ORDER IN CHAMBERS

Defendants seek an order excluding the testimony and report of Stephen Pettyjohn.

IT IS, THEREFORE, HEREBY ORDERED that Defendants' motion in limine to exclude the expert testimony and report of Stephen Pettyjohn (#160) is **DENIED** on the following basis.

Mr. Pettyjohn is not relying on purely subjective bases for his opinion that certain levels of noise are excessive. He bases his opinions in part on the fact that the laws of most states prohibit noise over five decibels. This conclusion does not require an expert opinion as to the status of the law. It appears to be a common basis for determining excessive noise, which a trained engineer would be familiar with.

Mr. Pettyjohn should not, however, make reference to Carson City's nuisance ordinance or other cities' nuisance ordinances. They do not appear to provide any objective standards for permissible levels of noise. Mr. Pettyjohn shall not state the conclusion that the levels of sound at issue constitute a nuisance or that Defendants were guilty of violating any ordinance. Mr. Pettyjohn shall not express any legal conclusions at all during testimony.

To the extent that experts in this field rely on anecdotal evidence by neighbors, the reference to the experiences of Mr. Irwin may be relied upon by Mr. Pettyjohn.

Counsel may inquire into the compensation received by Mr. Pettyjohn for his analysis and testimony. The fact that this was not disclosed as required by the rule is not a basis on which his testimony should be barred under the circumstances described here.

It appears Plaintiff has produced sufficient data such that Mr. Pettyjohn's opinion can be understood and tested. Whether there has been additional information not disclosed can be explored on cross-examination.

LANCE S. WILSON, CLERK

By /s/
Deputy Clerk